

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

BRYNDON FISHER and BRUCE REID,
derivatively on behalf of Federal National
Mortgage Association,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Defendant.

and FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Nominal Defendant.

Case No. 13-cv-00608-MMS
(Judge Sweeney)

ERICK SHIPMON, derivatively on behalf
of Federal National Mortgage Association,

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendant.

and FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Nominal Defendant.

Case No. 13-cv-00672-MMS
(Judge Sweeney)

**DECLARATION OF EDWARD F. HABER IN SUPPORT OF PLAINTIFFS'
MOTION FOR CONSOLIDATION OF SHAREHOLDER
DERIVATIVE ACTIONS AND APPOINTMENT OF LEAD COUNSEL**

I, Edward F. Haber, hereby declare under penalty of perjury as follows:

1. I am a partner of the firm Shapiro Haber & Urmy LLP (“Shapiro Haber”). I am counsel, along with Robert C. Schubert, of Schubert Jonckheer & Kolbe LLP (“Schubert Jonckheer”), for Plaintiffs Bryndon Fisher, Bruce Reid, and Erick Shipmon (collectively, the “Derivative Plaintiffs”). I respectfully submit this declaration in support of the Derivative Plaintiffs’ Motion for Consolidation of Shareholder Derivative Actions and Appointment of Lead Counsel (the “Motion”).

2. On behalf of the Derivative Plaintiffs, my firm, along with co-counsel Schubert Jonckheer, filed two shareholder derivative actions pending in this Court captioned *Fisher v. United States*, No. 13-cv-00608-MMS, and *Shipmon v. United States*, No. 13-cv-00672-MMS (together, the “Derivative Actions”). My firm, along with Schubert Jonckheer, conducted an extensive investigation into facts and legal issues involved in the actions, including (1) the Government’s imposition of the Net Worth Sweep, as defined in the complaints filed in the Derivative Actions; (2) the validity of a Takings Claim under the Fifth Amendment; (3) the application of sovereign immunity to actions for money damages against the U.S. government; (4) the applicable standards regarding demand futility under Delaware law and RCFC 23.1; (5) the requirements for standing under the Housing and Economic Recovery Act of 2008 (“HERA”); and (6) the procedures for litigating actions in the U.S. Court of Federal Claims.

3. Shapiro Haber is a law firm based in Boston, Massachusetts that specializes in the prosecution of complex civil actions, particularly securities class actions and derivative actions. Shapiro Haber has represented investors, consumers, and employees in many significant securities fraud, consumer protection and employment class actions, and derivative actions, obtaining multimillion-dollar jury verdicts and settlements. The firm has extensive experience in

both trials and appeals in state and federal courts nationwide and has recovered hundreds of millions of dollars for investors, employees, and consumers. Shapiro Haber has been appointed lead counsel in numerous complex cases, including numerous shareholder derivative actions. Four Shapiro Haber partners—myself, Thomas G. Shapiro, Thomas V. Urmy, Jr., and Michelle H. Blauner—have been named Massachusetts Super Lawyers for each of the past five years. The professional credentials of the partners and associates of Shapiro Haber and their extensive experience in prosecuting class actions and shareholder derivative actions are detailed in the Shapiro Haber firm resume, which is attached hereto as **Exhibit 1**.

4. Although Shapiro Haber's extensive relevant experience is set forth in Exhibit 1, I highlight in this declaration particular firm experience that is relevant to Shapiro Haber's qualifications to support proposed Lead Counsel and Attorney of Record Robert C. Schubert in this case. For example, Shapiro Haber was a leading firm in the extensive wave of shareholder litigation relating to companies' widespread practice of improperly backdating stock options. Shapiro Haber acted as lead counsel or part of a leadership team in derivative actions in state and federal courts on many such cases, obtaining substantial recoveries on behalf of major corporations, including Affiliated Computer Services, Inc.; Cablevision Systems Corp.; Linear Technology Corp.; Maxim Integrated Products; Staples, Inc.; and UnitedHealth Group, Inc. These cases resulted in substantial settlements for the benefits of these companies, including a settlement of more than \$700 million in cash and re-priced or surrendered option for UnitedHealth; \$38 million in similar benefits for Maxim; \$40 million in similar benefits for Affiliated Computer Services; and \$34 million in similar benefits for Cablevision. I personally acted as a primary attorney responsible for many of these significant shareholder derivative action successes.

5. As a further relevant example, Shapiro Haber was one of the court-appointed lead counsel in a consolidated derivative action brought on behalf of HealthSouth Corporation against its former CEO, Richard Scrushy, as well as its other former officers and directors, and others. Shapiro Haber helped manage the prosecution of related actions relating to the HealthSouth scandal in multiple forums, including various state and federal courts. Shapiro Haber, and I specifically, played leading roles in obtaining more than \$3 billion in settlements and judgments against Mr. Scrushy, HealthSouth's other former directors and officers, HealthSouth's former investment advisor, and other entities.

6. In addition to these and other major shareholder derivative actions in which Shapiro Haber has served a leading role, Shapiro Haber has extensive experience in securities litigation more generally. For example, Shapiro Haber was appointed co-lead counsel in Merrill Lynch securities analyst cases, resulting in a settlement of \$125 million for the benefit of the class. Shapiro Haber has also procured multimillion dollar settlements on behalf of defrauded shareholders of dozens of companies, further establishing its ability to obtain substantial benefits on behalf.

7. Shapiro Haber attorneys also have experience specifically in takings cases, underscoring counsel's qualifications to pursue the takings claims at issue in this case. Specifically, Shapiro Haber partner Ian McLoughlin—one of the attorneys who will be directly involved in this litigation—has been involved in the litigation of many government takings actions.

8. In sum, Shapiro Haber has substantial, relevant experience and expertise that make it an ideal firm to support the proposed Lead Counsel and Attorney of Record, Robert C. Schubert, in the prosecution of the proposed Consolidated Derivative Actions.

9. As detailed in the complaints that we prepared and filed in the Derivative Actions, Shapiro Haber and Schubert Jonckheer represent three plaintiffs with substantial holdings in Fannie Mae common stock, and we are thus committed to maximizing relief for Fannie Mae. We have prosecuted and will continue to prosecute vigorously the claims against the United States.

10. Shapiro Haber has substantial resources that it intends to commit to this case. Shapiro Haber typically prosecutes its class and derivative actions on a contingent fee basis, including advancing significant out-of-pocket expenses incurred. Shapiro Haber is ready, willing and able to invest its attorneys and financial resources in prosecuting the proposed Consolidated Derivative Action on behalf of Fannie Mae.

11. At this time, Shapiro Haber has committed three of its attorneys to directly participate in the case, each of whom has extensive experience in shareholder derivative actions and other securities actions. In the event the workload in the proposed Consolidated Derivative Action requires more attorney participation, my firm will assign additional firm attorneys to perform that work. Shapiro Haber also employs several paralegals and administrative support staff who will be available to assist with this matter. Shapiro Haber is fully willing and able to make the investment in the proposed Consolidated Derivative Action that is necessary to procure the best possible result for Fannie Mae, including but not limited to the hiring of expert witnesses or other consultants to advance Fannie Mae's interests.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 29, 2013

/s/ Edward F. Haber _____
Edward F. Haber

EXHIBIT 1

Shapiro Haber & Urmey LLP

OVERVIEW

With over 30 years of experience litigating, trying, and winning multi-million dollar cases across the country, Shapiro Haber & Urmey LLP (“Shapiro Haber & Urmey”) has long been a national leader in the field of complex, high-stakes litigation. Each of our attorneys has the educational background, expertise, and creativity to litigate against the largest, most prominent law firms in the country – and win. Unlike many other law firms in which only a few, if any, of the lawyers have actually tried a case to conclusion, our lawyers have successfully tried dozens of cases to verdict, including complex securities fraud actions, and have obtained outstanding results for our clients when efforts to reach a negotiated settlement have failed. As a result, we approach each case – large or small – with the expectation that it may be tried, and with the rigor and attention to detail that excellent trial preparation requires.

Four of Shapiro Haber & Urmey’s partners, Thomas G. Shapiro, Edward F. Haber, Thomas V. Urmey, Jr., and Michelle H. Blauner, were named Massachusetts Super Lawyers in 2006, 2007, 2008, 2009, 2010, 2011, and 2012 and partner Ian J. McLoughlin was named a Massachusetts Rising Star in 2009, 2010, 2011, and 2012. Associate Adam M. Stewart was named Massachusetts Rising Stars in 2011 and 2012. The firm has been awarded the “AV” rating by the Martindale-Hubbell Law Directory, which is given only to those firms that have earned a very high measure of professional esteem and have adhered to the highest ethical standards in the legal profession.

Shapiro Haber & Urmey’s commitment to success in high-stakes, high-profile litigation is matched by its commitment to providing access to quality legal representation on a pro bono or reduced-fee basis to low-wage individuals who otherwise might not be able to afford legal help. Our attorneys have represented low-wage workers in the fields of hospitality, janitorial services, and retail, in actions seeking to recover unpaid wages ranging from hundreds to tens of thousands of dollars. In each of these smaller cases we incur large fees and expenses, often far in excess of the wages sought to be recovered.

It is our belief that part of our duty as members of the bar is to represent those who otherwise would not have any means to obtain relief in court, and we welcome that responsibility. Reflecting this commitment, in 2011 the firm received the Law Firm Award from the Political Asylum/Immigration Representation Project (PAIR) for its pro bono work in representing asylum seekers.

OUR LEGAL TEAM

Thomas G. Shapiro, Partner

- 1965, B.A. *magna cum laude*, Harvard College
- 1969, J.D. *cum laude*, Harvard Law School

Edward F. Haber, Partner

- 1966, B.A., Cornell University
- 1969, J.D. *cum laude*, Harvard Law School

Thomas V. Urmey, Jr., Partner

- 1960, B.A. *cum laude*, Amherst College
- 1964, L.L.B., Yale Law School

Michelle H. Blauner, Partner

- 1983, B.A. *with highest distinction*, Cornell University
- 1986, J.D. *cum laude*, Harvard Law School

Ian J. McLoughlin, Partner

- 1997, B.A. *cum laude*, Gonzaga University
- 2000, J.D. *magna cum laude*, Boston University School of Law

Adam M. Stewart, Associate

- 2001, B.S. *magna cum laude*, Northeastern University
- 2004, J.D. *magna cum laude*, Suffolk University Law School
- 2004-2005, law clerk for the Justices of the Massachusetts Superior Court

Rachel M. Brown, Associate

- 1992, B.A. *with first class honors*, Cambridge University
- 1993, M. Phil., Cambridge University
- 1999, Ph.D., Massachusetts Institute of Technology
- 2006, J.D. *magna cum laude*, Harvard Law School

Patrick J. Vallely, Associate

- 2002, B.A. *magna cum laude*, University of Dayton
- 2005, J.D. *with honors*, University of Chicago Law School

April Kuehnhoff, Associate

- 2001, B.A. *summa cum laude*, Wellesley College
- 2004, M.A., University of Sussex
- 2009, J.D., Harvard Law School
- 2010-2012, law clerk for the Honorable Gary Katzmman of the Massachusetts Appeals Court

Complete Biographies For Each Of Our Attorneys Are Attached At The End Of This Resume.

JUDICIAL RECOGNITION

- Shapiro Haber & Urmy “comes with a wealth of experience and skill in prosecuting class actions.” *US West, Inc., et al. v. Macallister, et al.*, Fed. Sec. L. Rep. P 97, 269 (D. Colo. 1992) (Babcock, J.).
- Shapiro Haber & Urmy is “highly qualified to act as lead counsel for the Class” and “has extensive experience in prosecuting class actions, including as lead counsel.” *US Trust Co. of NY v. Albert* (S.D.N.Y. 1995) (Grubin, J.).
- “[Shapiro Haber & Urmy] have wide experience in the field of securities class litigation [and] ... counsels’ skillful and zealous representation over a six-year period enabled the settling classes to obtain a favorable and certain cash recovery. . . . The high quality of representation provided by [Shapiro Haber & Urmy] is evident from the extensive record of this case” *In re Merrill Lynch & Co., Inc. Research Reports Securities Litig.*, 246 F.R.D. 156, 164, 174 (S.D.N.Y. 2007) (Keenan, J.).
- Shapiro Haber & Urmy “has broad-based experience in complex litigation, including experience in securities fraud class actions in this district and others.” *Swack v. Credit Suisse First Boston*, 230 F.R.D. 250, 267 (D. Mass. 2005) (Woodlock, J.).
- “I am satisfied that [Shapiro Haber & Urmy] will prosecute this action vigorously and will protect the interests of the absent class members.” *McLaughlin v. Liberty Mutual Ins. Co.*, 224 F.R.D. 304, 310 (D. Mass. 2004) (Keeton, J.).
- “I think that [Shapiro Haber & Urmy] has done an excellent job on this and makes my job much, much easier.” *Olmeda v. AM Broadband, LLC*, C.A. No. 06-cv-30051 (D. Mass. 2009) (Final Approval Hearing, Oct. 14, 2009) (Neiman, M.J.).
- Shapiro Haber & Urmy is “highly qualified both generally, and in the specific context of private class actions under the Federal securities laws.” *Coopersmith, et al. v. Lehman Brothers, Inc.*, 344 F. Supp. 2d 783, 784 (D. Mass. 2004) (Gorton, J.).

QUALIFICATIONS AND EXPERIENCE

Highlights of Shapiro Haber & Urmy's class and derivative action experience include the following:

SECURITIES LITIGATION

- Shapiro Haber & Urmy is lead counsel prosecuting an ERISA class action in the United States District Court for the District of Massachusetts, on behalf of the participants in State Street Corporation's Salary Savings Plan against State Street Corp. and the administrators of the Plan. Plaintiff alleges that State Street breached its fiduciary duties to the Plan participants by continuing to offer State Street stock as an investment option under the Plan, when the stock was overvalued and no longer a prudent investment alternative, and that defendants made material misrepresentations about the company's foreign exchange trading revenue in communications with Plan participants who had invested in State Street stock. *Richard v. State Street Corp.* (D. Mass.).
- Shapiro Haber & Urmy is co-lead counsel prosecuting a class action on behalf of the sellers of Sigma Designs, Inc. stock from July 13, 2007 through November 28, 2007, alleging securities fraud and insider trading against Sonar Capital Management LLC and certain of its affiliated investment funds and investors and certain of its principals. *Gordon v. Sonar Capital Mgmt., Inc.* (S.D.N.Y.).
- Shapiro Haber & Urmy is on the executive committee prosecuting a securities class action alleging fraud against the former officers and auditors of now bankrupt Winstar Communications, Inc. The lawsuit also alleged that Lucent Technologies participated in the fraud. The case against the former officers settled for \$18.125 million and the case against Lucent settled for \$12 million. The case against the auditors settled shortly before trial in June 2013 for \$10 million, and the Court has granted preliminary approval to the settlement. *In re Winstar Commc'ns Inc. Sec. Litig.* (S.D.N.Y.).
- Shapiro Haber & Urmy is liaison counsel prosecuting an action on behalf of the Federal Home Loan Bank of Boston (the "Bank") in the United States District Court for the District of Massachusetts, arising from the sale to the Bank by numerous financial institutions of over \$5.9 billion in Private Label Mortgage-Backed Securities, by means of offering documents which Plaintiffs allege were materially false and misleading. The Bank seeks rescission and damages under M.G.L. c. 110A, M.G.L. c. 93, and applicable common law. *Fed. Home Loan Bank of Boston v. Ally Fin., et. al.* (D. Mass.).
- Shapiro Haber & Urmy is liaison counsel prosecuting a class action, pending in the United States District Court for the District of Massachusetts, alleging that State Street Bank and Trust Company breached its custodial agreements and other duties to its custodial clients in connection with a multi-million scheme to defraud committed by their investment advisor. *Handal v. State Street Corp.* (D. Mass.).

- Shapiro Haber & Urmey was co-lead counsel in a class action alleging fraud against former officers and auditors of Actrade Financial Technologies. A settlement for \$5,250,000 recently received final approval in the Southern District of New York. *In re Actrade Fin. Techs., Inc. Sec. Litig.* (S.D.N.Y.).
- Shapiro Haber & Urmey represented the Commonwealth of Massachusetts Pension Reserves Investment Trust (“PRIT”) in a securities fraud action against Bear Stearns & Co., Inc. in the United States District Court for the Southern District of California. The case arose out of the sale of \$81 million in subordinated debentures issued by Weintraub Entertainment Group (“WEG”), a start-up film company. In February 1987, PRIT bought \$5 million in bonds from Bear Stearns, the placement agent for the issuer. WEG declared bankruptcy in 1990, and the bondholders lost virtually their entire investment. A class action was filed in San Diego against Bear Stearns and others. PRIT also filed suit in 1991, and in 1993 our action was consolidated with the class action for discovery and trial. The case was tried to a jury in San Diego in the summer of 1998. Shapiro Haber & Urmey partner Thomas V. Urmey was PRIT’s trial counsel. After a four-week trial, the jury found that Bear Stearns had committed securities fraud and entered a \$6.57 million verdict in favor of PRIT, representing 100% of the damages sought by PRIT at the trial. The case was subsequently settled while on appeal to the Ninth Circuit. *Pension Reserves Inv. Trust v. Bear Stearns & Co.* (S.D. Cal.).
- Shapiro Haber & Urmey represented a Massachusetts bank in litigation against Merrill Lynch involving the sale of auction rate securities. *Cooperative Bank v. Merrill Lynch Pierce Fenner & Smith, Inc.* (S.D.N.Y. remanded to D. Mass.).
- Shapiro Haber & Urmey was at the forefront of shareholder litigation addressing the nationwide epidemic of improperly backdated stock options. The firm was lead counsel or part of the leadership team in derivative actions in both state and federal courts concerning the improper backdating (or other manipulation) of stock options granted to officers, directors, and executives of the following corporations: Affiliated Computer Services, Inc.; Cablevision Systems Corp.; Linear Technology Corp.; Maxim Integrated Products; Staples, Inc.; and UnitedHealth Group, Inc. The UnitedHealth derivative action settled for over \$700 million in cash and re-priced or surrendered options – the largest derivative action options settlement on record. Other notable settlements included Maxim (approximately \$38 million in cash and re-priced and surrendered options); Affiliated Computer Services (approximately \$40 million in cash and re-priced and surrendered options); Cablevision (approximately \$34 million in cash and other consideration); Staples (approximately \$8.2 million in cash and re-priced options); Linear (\$4.5 million in cash and re-priced options as well as corporate governance changes).
- Shapiro Haber & Urmey was one of the court-appointed lead counsel in the consolidated derivative action brought on behalf of the HealthSouth Corporation against its former CEO, Richard Scrushy, its other former officers and directors, and others. This action coordinated derivative actions brought on behalf of HealthSouth in the Delaware

Chancery Court, the Federal District Court in Alabama, and the state court in Birmingham, Alabama. The legal team, on which Shapiro Haber & Urmy served as one of the lead counsel, obtained the following recoveries for HealthSouth: (i) summary judgment in the Delaware Chancery Court for over \$17 million, *In re HealthSouth Corp. S'holders Litig.*, 845 A.2d 1096 (Del. Ch. 2003), *aff'd*, 847 A.2d 1121 (Del. 2004); (ii) summary judgment in the Circuit Court of Jefferson County, Alabama for over \$47 million, *see Tucker v. Scrushy*, 2006 WL 37028 (Ala. Cir. Ct. Jan. 3, 2006), *aff'd*, 2006 WL 2458818 (Ala. Aug. 25, 2006); (iii) a settlement of the derivative claims against some of the officers and directors of HealthSouth for \$100 million; (iv) a \$133 million settlement of the derivative claims against HealthSouth's former investment advisor, UBS; and (v) a \$2.8 billion dollar judgment against Mr. Scrushy after a bench trial in the Circuit Court of Jefferson County, Alabama.

- Shapiro Haber & Urmy was the court-appointed co-chairman of the Plaintiffs' Executive Committee in *In re Merrill Lynch Analyst Reports Sec. Litig.*, 02-MDL-1484 (S.D.N.Y.). The firm was also court-appointed lead counsel in two of the Merrill Lynch securities analyst cases: *InfoSpace Analyst Reports Sec. Litig.*, and *Internet Capital Group Analyst Reports Sec. Litig.* The Court approved a settlement in the amount of \$125 million.
- Shapiro Haber & Urmy was lead counsel in two analyst conflict of interest cases against Credit Suisse First Boston on behalf of the shareholders of Winstar Communications, Inc. and Razorfish, Inc., both of which produced multi-million dollar recoveries. *Ahearn v. Credit Suisse First Boston (Winstar)* (D. Mass.); *Swack v. Credit Suisse First Boston (Razorfish)* (D. Mass.).
- Shapiro Haber & Urmy represented a class of persons who had sold businesses to Waste Management, Inc. for common stock of Waste Management. The case arose from Waste Management's restatement of its financial statements. Shapiro Haber & Urmy obtained summary judgment against Waste Management as to liability for a majority of the class members. Shapiro Haber & Urmy also successfully defended defendant's appeal of the class certification order, *Mowbray v. Waste Management Holdings, Inc.*, 208 F.3d 288 (2000). The case was subsequently settled for a combination of cash and stock with a total value of \$25 million.
- Shapiro Haber & Urmy represented former employees of Stone & Webster, Inc. to recover damages suffered by the company's retirement plans for breach of fiduciary duty under ERISA by certain former officers and directors of Stone & Webster who were fiduciaries of the plans when they continued to offer Stone & Webster stock as an investment option in the period before Stone & Webster filed for bankruptcy. The action settled for \$8 million. *Stein v. Smith* (D. Mass.).

- Shapiro Haber & Urmy represented shareholders of three ING Principal Protection Funds who brought suit alleging that the advisory fees charged are excessive and violate Section 36(b) of the Investment Company Act of 1940. The action was settled for payment by the defendants to the ING Principal Protection Funds of significant funds and a substantial reduction in investment advisory fees to be charged, which resulted in millions of dollars of future savings to the funds and their shareholders. *Price v. ING Funds Distributors, LLC* (D. Mass.).
- Shapiro Haber & Urmy was one of plaintiffs' counsel in shareholder derivative litigation against Cendant Corporation, which arose from one of the largest financial frauds in American history. The case was settled for \$54 million. *In Re Cendant Corp. Deriv. Action Litig.* (D.N.J.).
- Shapiro Haber & Urmy represented the Trustee of UNIFI Communications, Inc., in a breach of fiduciary duty lawsuit against its former directors, alleging that they grossly mismanaged UNIFI in the period leading up to its bankruptcy, causing UNIFI's insolvency to deepen. Shapiro Haber & Urmy recovered \$3.95 million for UNIFI and its creditors. *Ferrari v. Ranalli* (D. Mass.).
- Shapiro Haber & Urmy represented shareholders of EcoScience Corp. in a breach of fiduciary duty lawsuit against its former directors, arising out of the merger between EcoScience and Agro Power Development, Inc. The case, brought in the Delaware Chancery Court, charged that the merger was accomplished by means of a false proxy statement, and resulted in the payment of an unfair price to EcoScience shareholders. Shapiro Haber & Urmy recovered \$2 million for EcoScience's shareholders. *Smalley v. DeGiglio* (Del. Ch.).
- Shapiro Haber & Urmy represented shareholders in a class action alleging securities violations in connection with a secondary offering of Digital Equipment Corp. securities. After dismissal by the District Court, partner Thomas Shapiro successfully argued the appeal to the First Circuit in *Shaw v. Digital Equipment Corp.*, 83 F.3d 1194 (1st Cir. 1996). The case was thereafter settled for \$5.2 million.
- Shapiro Haber & Urmy has recovered substantial settlements for defrauded shareholders by prosecuting securities class action suits on behalf of shareholders of, *inter alia*: Bank of New England Corp. (\$6.5 million); Bank of New England Corp. bondholders (\$8.4 million); Biopure Corp. (\$10 million); Centennial Tech., Inc. (stock and cash with a value of approximately \$20 million); Inso Corp. (\$12 million); Kendall Square Research Corp. (cash, stock and warrants, with a total value of approximately \$17 million); Kurzweil Applied Intelligence, Inc. (\$9.625 million); Lotus Dev. Corp. (\$7.5 million); MicroCom, Inc. (\$6 million); Molten Metal Tech., Inc. (\$11.85 million); Monarch Capital Corp. (\$5 million); Open Environment Corp. (\$6 million); Pegasystems, Inc. (\$5.25 million); Picturetel Corp. (\$12 million); Presstek, Inc. (\$20 million); Minoco Oil and Gas Drilling Limited Partnerships (\$15 million).

SECURITIES LITIGATION TRIALS

Attorneys in the firm have conducted the following jury trials in securities cases. Attorneys in the firm have also conducted numerous civil and criminal jury trials in non-securities matters.

- Mr. Urmy obtained a favorable jury verdict on behalf of the PRIT Fund in a case tried in the United States District Court for the Southern District of California.
- Messrs. Shapiro and Haber were chief trial counsel in a securities class action entitled *Fulco v. Continental Cablevision*, C.A. No. 89-1342-Y, in a three-week jury trial before Judge Young in the United States District Court in Boston. The case was brought on behalf of the limited partners in four partnerships that owned and operated cable television systems. The jury returned a verdict for the plaintiffs for approximately \$4.5 million.
- Mr. Shapiro was chief trial counsel in a securities fraud class action against Polaroid Corporation in federal court in Boston, which resulted in a jury verdict with an estimated value of \$30 million. A panel of the Court of Appeals for the First Circuit found error in the jury instructions and remanded the case for a new trial. Polaroid then petitioned for and received *en banc* reconsideration. Sitting *en banc*, the First Circuit reversed the judgment. *Backman v. Polaroid Corp.*, 910 F.2d 10 (1st Cir. 1990).
- Mr. Shapiro represented a business owner in a suit against a public company in Massachusetts that acquired his business in exchange for \$11 million in company stock. The suit alleged that the stock price was artificially inflated as a result of false financial statements. Mr. Shapiro conducted the bench trial in 2009 against lawyers from three of the largest firms in Boston.
- Mr. Haber and Ms. Blauner represented one partner in a suit against another partner for breach of fiduciary duty. The case was tried to a jury in the federal court in Boston, which returned a verdict in favor of our client in the full amount of the damages sought. The verdict was affirmed on appeal. *Wartski v. Bedford*, 926 F.2d 11 (1st Cir. 1991).
- Mr. Shapiro was co-trial counsel for a defendant in a jury-waived trial on an indictment for fraud in the sale of securities, filing false financial statements, and conspiracy. Mr. Shapiro was also on the brief in the appeal from that conviction. *United States v. Lieberman*, 608 F.2d 889 (1st Cir. 1979).

SECURITIES LITIGATION APPEALS

Attorneys at Shapiro Haber & Urmy had principal responsibility for the brief, and presented the oral argument, in the following appeals in securities cases.

- *In re PolyMedica Corp. Sec. Litig.*, 432 F.3d 1 (1st Cir. 2005)
- *Lentell v. Merrill Lynch & Co., Inc.*, 396 F.3d 161 (2d Cir. 2005)
- *Geffon v. Micrion Corp.*, 249 F.3d 29 (1st Cir. 2001)
- *Mowbray v. Waste Mgmt.*, 203 F.3d 288 (1st Cir. 2000)
- *Wells v. Monarch Capital Corp.*, 129 F.3d 1253 (Table) (1st Cir. 1997)
- *Alpha Group Consultants Ltd. v. Bear Stearns*, 119 F.3d 5 (Table) (9th Cir. 1997)
- *Glassman v. Computervision, Inc.*, 90 F.3d 617 (1st Cir. 1996)
- *Shaw v. Digital Equip. Corp.*, 82 F.3d 1194 (1st Cir. 1996)
- *Wartski v. Bedford*, 926 F.2d 11 (1st Cir. 1991)
- *Backman v. Polaroid Corp.*, 910 F.2d 10 (1st Cir. 1990)
- *Roeder v. Alpha Indus., Inc.*, 814 F.2d 22 (1st Cir. 1987)
- *Frishman v. Maginn*, 75 Mass. App. Ct. 103 (2009)
- *Wolf v. Prudential-Bache Sec., Inc.*, 41 Mass. App. Ct. 474 (1996)
- *Kessler v. Sinclair*, 37 Mass. App. Ct. 573 (1994)

CONSUMER LITIGATION

- Shapiro Haber & Urmy represents plaintiffs in a class action lawsuit filed in the Superior Court for Suffolk County, No. 98-6002-H, against Philip Morris Companies, Inc. and Philip Morris, Inc. The suit is brought under the Massachusetts Consumer Protection Act, M.G.L. c. 93A, and the common law, and seeks to recover damages from the defendants on behalf of all persons who purchased Marlboro Light cigarettes in the Commonwealth of Massachusetts. The case alleges that by using words such as “Light” and “Lowered Tar and Nicotine” on the packaging of Marlboro Lights, defendants falsely represented to purchasers that the cigarettes contained and delivered lower levels of tar and nicotine to human smokers than did regular cigarettes. In October of 2001, the Superior Court certified the case as a class action. Shapiro Haber & Urmy successfully argued against defendants’ appeal from the class certification decision, which was affirmed by the Supreme Judicial Court in August of 2004, *Aspinall v. Philip Morris Companies, Inc.*, 442 Mass. 381 (2004). The firm also successfully prevailed, before both the Superior Court and the Supreme Judicial Court, against Philip Morris’ argument

that a consumer's claims under c. 93A were preempted by federal law and the actions of the Federal Trade Commission. The final decision is reported at 453 Mass. 431 (2009). The remaining issues in the case are still being litigated before the Superior Court.

- Shapiro Haber & Urmy represents putative classes of plaintiffs in litigation throughout the United States charging Bank of America with breach of contract and breach of the covenant of good faith and fair dealing in connection with the purchase of hazard and flood insurance in excess of the coverage amounts required by the mortgage agreements. In two of those cases, *Kolbe v. Bank of America*, 695 F.3d 111 (1st Cir. 2012), *en banc review granted*, and *Lass v. Bank of America*, 695 F.3d 129 (1st Cir. 2012), the Court of Appeals for the First Circuit reversed the district court's orders dismissing the claims.
- Shapiro Haber & Urmy also represents or has represented defrauded consumers and business owners by prosecuting class action suits against:
 - Seven Massachusetts automobile insurance companies for nonpayment of interest on arbitration awards;
 - Homeward Residential, Inc. for breach of the covenant of good faith and fair dealing, and unfair business practices associated with its force-placed hazard insurance practices;
 - Building Products of Canada for selling defective roofing shingles;
 - Various health maintenance organizations for failure to pay claims of non-participating medical service providers for medical services in a timely fashion;
 - Zions First National Bank for charging and collecting excessive overdraft fees;
 - Re\$ubmiIt, LLC for unauthorized fees charged for insufficient funds checks;
 - U-Haul for attempted price-fixing in violation of the Massachusetts consumer protection statute'
 - Wozo, LLC for deceptive internet marketing;
 - American Medical Security, Inc. for unfair insurance practices;
 - TJX Companies, Inc. and Princeton Review related to the theft of personal and financial information of customers;
 - E.I. DuPont De Nemours & Company for the potential of serious health hazards resulting from the manufacturing, sales and advertising of "Teflon";
 - Gillette for engaging in deceptive marketing practices with respect to its M3P razor and blades; and
 - Southwestern Bell (doing business as Cellular One) for overcharging.

CONSUMER LITIGATION APPEALS

Attorneys in our firm had principal responsibility for the brief, and presented the oral argument, in the following appeals in consumer class actions, many of which have asserted claims under M.G.L. c. 93A.

- *Kolbe v. BAC Home Loans Servicing, LP*, 695 F.3d 111 (1st Cir. 2012)
- *Downing v. Globe Direct LLC*, 682 F.3d 18 (1st Cir. 2012)
- *Liu v. Amerco*, 677 F.3d 489 (1st Cir. 2012)
- *Aspinall v. Philip Morris, Inc.*, 453 Mass. 431 (2009)
- *Good v. Altria Group, Inc.*, 501 F.3d 29 (1st Cir. 2007), *aff'd* 129 S. Ct. 528 (2008)
- *Aspinall v. Philip Morris Cos., Inc.*, 442 Mass. 381 (2004)
- *Smilow v. Sw. Bell Mobile Sys., Inc.*, 323 F.3d 32 (1st Cir. 2003)
- *Roberts v. Enterprise Rent-A-Car Co. of Boston, Inc.*, 438 Mass. 187 (2002)

WHISTLE-BLOWER ACTIONS

Shapiro Haber & Urmy has handled a number of whistleblower cases over the years, including under the federal False Claims Act and pursuant to the Securities and Exchange Commission's ("SEC") recently promulgated regulations under the Dodd-Frank Act. For example, the firm served as counsel to a whistle-blower alleging that Raytheon had violated the federal False Claims Act. In addition, the firm currently represents whistle-blowers in three separate matters brought pursuant to the SEC's new whistle-blower program. In each of those cases, the firm is assisting the whistle-blower in providing information to the SEC about possible violations of the federal securities laws by the whistle-blowers' former employers.

ANTITRUST LITIGATION

- Shapiro Haber & Urmy has played a leading role as a member of the Plaintiffs' Steering Committee in *In re Plasma Derivative Protein Therapies Antitrust Litig.*, C.A. No. 09-cv-07666 (N.D. Ill.), successfully defeating three lengthy and substantial motions to dismiss in that case. This is a complex, nationwide putative class action against manufacturers of plasma protein derivative therapies, which are proteins used to treat seriously ill patients across the United States. The action, filed on behalf of all direct purchasers of plasma-derivative protein therapies, alleges that plasma manufacturers agreed to restrict supply and therefore increase prices. In deciding to appoint the firm to

its leadership position, the Court highlighted Shapiro Haber & Urmey's extensive experience litigating complex class actions.

- Shapiro Haber & Urmey represents several of the nation's largest bedding manufacturers and licensors as plaintiffs in *In re Polyurethane Foam Antitrust Litig.*, C.A. No. 10-md-02196 (N.D. Ohio). Plaintiffs allege that Defendants and their co-conspirators contracted, combined, or conspired to fix, raise, maintain, and/or stabilize prices and allocate customers for polyurethane foam in the United States.
- Shapiro Haber & Urmey is part of the Executive Committee in *In Re: Nexium (Esomeprazole) Antitrust Litig.*, C.A. No. 12-md-02409 (D. Mass.), representing a putative class of consumers and third-party payors who purchased or paid for Nexium products. Plaintiffs allege that Defendants conspired and entered into anticompetitive agreements designed to shield Defendant AstraZeneca and its brand name drug, Nexium, from competition with generic, lower priced versions of the drug.
- Shapiro Haber & Urmey has assisted in the representation of a certified class of dairy farmers in the Northeastern United States who allege that the defendants unlawfully monopolized and fixed the prices that they paid dairy farmers for their milk, and unlawfully allocated markets. The defendants included Dairy Farmers of America, Inc., Dairy Marketing Services, LLC, and Dean Foods Company. The Court approved a settlement between Plaintiffs and Defendant Dean Foods Company that provided for \$30 million in settlement funds. The case is *Allen v. Dairy Farmers of America, Inc., et al.*, C.A. No. 09-cv-230 (D. Vt.).
- In *In re: Automotive Parts Antitrust Litig.*, Master File No. 12-md-02311 (E.D. Mich.), Shapiro Haber & Urmey represents a putative class of indirect purchasers of various auto parts. The action alleges that Defendants fixed and maintained the prices at which such parts were sold.
- In *In re Optical Disk Drive Products Antitrust Litig.*, C.A. No. 10-md-2143 (N.D. Cal.), Shapiro Haber & Urmey represents a putative class of purchasers of optical disc drives, as well as products containing optical disc drives, including DVD players, computers, and other electronic devices. The action alleges that Defendants and their co-conspirators fixed and maintained an artificial price at which optical disc drives, as well as products containing optical disc drives, were sold in the United States.
- In *In re: Refrigerant Compressors Antitrust Litig.*, C.A. No. 09-md-02042 (E.D. Mich.), Shapiro Haber & Urmey represents a putative class of indirect purchasers of refrigerant compressors. The action alleges that Defendants fixed and maintained the prices at which such compressors were sold.

- Shapiro Haber & Urmy was appointed Vice Chair of the Executive Committee representing the class of direct purchasers in *In re Marine Products Antitrust Litig.*, C.A. No. 10-cv-2319 (C.D. Cal.) (continuing as *Ace Marine Rigging & Supply, Inc. v. Virginia Harbor Services, Inc., et al.*, C.A. No. 11-cv-00436 (C.D. Cal) and *Board of Commissions of the Port of New Orleans v. Virginia Harbor Services, Inc., et al.*, C.A. No. 11-cv-004367 (C.D. Cal)). The firm represented a class of direct purchasers of several products used in the marine industry to protect vessels, docks, and piers. The class action alleged that manufacturers of these marine products collaborated to rig bids and divide the market in order to avoid competition and maximize profits.

WAGE AND HOUR LITIGATION

Shapiro Haber & Urmy has successfully represented plaintiff employees in many wage and hour individual and class actions seeking to recover overtime pay owed to them under both state and federal law. Such cases have been successfully prosecuted in federal and state courts in Massachusetts and other states, recovering millions of dollars in damages from employers such as Electronic Arts; Sony Computer Entertainment America, Inc.; Arbella Insurance Company; Liberty Mutual Insurance Company; Continental Insurance Company; USAA; Ames Department Stores, Inc.; Argenbright, Inc.; Abercrombie & Fitch; Lane Bryant, Inc.; Express; and AM Broadband LLC. Shapiro Haber & Urmy is currently prosecuting wage claims against CVS and United Parcel Service.

ATTORNEY BIOGRAPHIES

Partners:

Thomas G. Shapiro

Mr. Shapiro graduated from Harvard College (*magna cum laude*) in 1965 and from Harvard Law School (*cum laude*) in 1969. Mr. Shapiro is well known for his expertise and experience in securities litigation. He has an AV rating from Martindale-Hubbell and has been named a Massachusetts Super Lawyer numerous times, most recently in 2012. He has also been named to the national list of Super Lawyers in the Corporate Counsel Edition for securities litigation. He has been a faculty member in continuing legal education programs concerning securities litigation sponsored by the Practising Law Institute, ALI-ABA, Massachusetts Continuing Legal Education, Massachusetts Academy of Trial Attorneys, and the Boston Bar Association. Mr. Shapiro has lectured on securities litigation issues for the American Corporate Counsel Association and at a NASDAQ Financial Executive Conference for senior officers of NASDAQ companies. Mr. Shapiro was also on the faculty of the Flaschner Judicial Institute's seminar for Massachusetts Superior Court judges on the Trial and Management of Complex Cases.

Mr. Shapiro is the author of the chapter "Depositions in Class Actions" in Massachusetts Deposition Practice Manual, published by Massachusetts Continuing Legal Education in 1992, and co-author of *Securities Litigation in the Aftermath of In Re Data Access Securities Litigation*, 24 New. Eng. L. Rev. 537 (1990). He served as the first Chairman of the Federal Practice Committee of the Massachusetts Bar Association. He is a member of the Bars of the Commonwealth of Massachusetts, the United States District Court for the District of Massachusetts, the United States Court of Appeals for the First Circuit, and the Supreme Court of the United States.

Edward F. Haber

Mr. Haber graduated from Cornell University in 1966 and from Harvard Law School (*cum laude*) in 1969. Upon graduation from Harvard Law School, he taught at the Boston College Law School during the 1969-1970 academic year. Mr. Haber has an AV rating from Martindale-Hubbell, and has been named a Massachusetts Super Lawyer in the field of securities litigation for the past several years, most recently in 2012. He has also been named to the national list of Super Lawyers in the Corporate Counsel Edition for securities litigation. In 1988 and 1990, he was on the faculty of the New England Federal Securities Regulation Institute, sponsored by the American Law Institute/American Bar Association Committee on Continuing Professional Education. In April 1992, he was on the faculty of the Massachusetts Bar Association's seminar on the Fundamentals of Securities Arbitration.

Mr. Haber is a member of the Bars of the Commonwealth of Massachusetts, the Supreme Court of the United States, the United States Courts of Appeals for the First and Seventh Circuits, and the United States District Court for the District of Massachusetts.

Thomas V. Urmey, Jr.

Mr. Urmey graduated from Amherst College (*cum laude*) in 1960 and from Yale Law School in 1964. He has an AV rating from Martindale-Hubbell and has been named a Massachusetts Super Lawyer numerous times, most recently in 2012. Between 1964 and 1972 he was the personal assistant and associate for the Honorable Whitman Knapp, who was named as the head of the Commission to Investigate Police Corruption in New York City and later a Judge of the United States District Court for the Southern District of New York. Before formation of the current firm in 1988, Mr. Urmey was a partner in the Boston law firm Warner & Stackpole.

Mr. Urmey is a member of the Bars of the Commonwealth of Massachusetts, the United States District Courts for the District of Massachusetts and the Southern and Eastern Districts of New York, the United States Courts of Appeals for the First, Second, Third, Ninth, and District of Columbia Circuits, and the United States Supreme Court.

Michelle H. Blauner

Ms. Blauner is a 1983 graduate of Cornell University (with highest distinction) and a 1986 graduate of Harvard Law School (*cum laude*). She has been named a Massachusetts Super Lawyer numerous times, most recently in 2012. Upon graduation she became an associate at the Boston law firm of Foley, Hoag & Elliot. In 1988 she joined the firm as an associate, and she became a partner in 1993. Ms. Blauner has worked on many of the complex class actions prosecuted by the firm. She is co-author, with Mr. Shapiro, of *Securities Litigation in the Aftermath of In Re Data Access Securities Litigation*, 24 New. Eng. L. Rev. 537 (1990). Ms. Blauner is a member of the Bars of the Commonwealth of Massachusetts, the United States District Courts for the Districts of Massachusetts and Colorado, and the United States Court of Appeals for the First Circuit.

Ian J. McLoughlin

Mr. McLoughlin is a 1997 graduate of Gonzaga University (*cum laude*) and a 2000 graduate of Boston University School of Law (*magna cum laude*). He has been named a Massachusetts Super Lawyer Rising Star in the field of business litigation for 2009, 2010, 2011, and 2012. He was a litigation associate at the Boston law firm of Foley Hoag LLP from 2000 to 2007 and joined Shapiro Haber & Urmey in 2008. He became a partner in 2012. He is a member of the Bars of the Commonwealth of Massachusetts, the United States Court of Appeals for the First Circuit, and the United States District Courts for the Districts of Massachusetts and Colorado. His work has contributed to Shapiro Haber & Urmey's receipt

of the 2011 Pro Bono Law Firm Award from the Political Asylum/Immigration Representation Project (PAIR) for its work in representing asylum seekers.

Associates:

Adam M. Stewart

Mr. Stewart is a 2001 graduate of Northeastern University (*magna cum laude*) and a 2004 graduate of Suffolk University Law School (*magna cum laude*). He has been named a Massachusetts Super Lawyer Rising Star for 2011 and 2012. He was a law clerk to the Justices of the Massachusetts Superior Court from 2004 to 2005 and joined Shapiro Haber & Urmey in 2005. He is the author of *The Silent Domino: Allowing Pre-Arrest Silence As Substantive Evidence of Guilt and The Possible Effect on Miranda*, 37 Suffolk Univ. L. Rev 189 (2004). He is a member of the Bars of the Commonwealth of Massachusetts, the United States District Court for the District of Massachusetts, and the United States Court of Appeals for the First Circuit.

Rachel M. Brown

Ms. Brown is a 1992 graduate of Cambridge University (*first class honors*) and a 2006 graduate of Harvard Law School (*magna cum laude*). She also earned an M. Phil. degree from Cambridge University in 1993 and a Ph.D. from the Massachusetts Institute of Technology in 1999. She was a litigation associate at the Boston law firm of Foley Hoag LLP from 2006 to 2010, and joined Shapiro Haber & Urmey in 2010. Prior to law school, Ms. Brown worked as an assistant professor of philosophy at Union College in New York State and at McGill University in Quebec. She has several publications in peer-reviewed philosophy journals. During law school, she was a court mediator with the Harvard Mediation Program and mediated numerous disputes in Massachusetts small claims courts. She is a member of the Bars of the Commonwealth of Massachusetts and the United States District Court for the District of Massachusetts. Her work contributed to Shapiro Haber & Urmey's receipt of the 2011 Pro Bono Law Firm Award from the Political Asylum/Immigration Representation Project (PAIR) for its work in representing asylum seekers.

Patrick J. Valley

Mr. Valley is a 2002 graduate of the University of Dayton (*magna cum laude*) and a 2005 graduate of The University of Chicago Law School (*with honors*), where he was Editor in Chief of the *Chicago Journal of International Law*. He was a litigation associate at the Boston law firm of Foley Hoag from 2005 to 2012, and joined Shapiro Haber & Urmey in 2012. He is a member of the Bars of the Commonwealth of Massachusetts and the United States District Court for the District of Massachusetts.

April Kuehnhoff

Ms. Kuehnhoff is a 2001 graduate of Wellesley College (*summa cum laude*), a 2004 graduate of Sussex University, and a 2009 graduate of Harvard Law School. She was a law clerk to the Honorable Gary Katzmann at the Massachusetts Appeals Court from 2010 to 2012. She is a member of the Bar of the Commonwealth of Massachusetts.